

## II. REMARKS

The Office Action dated April 15, 2010, has been received and carefully noted. This response is filed with a Petition for Three Month Extension of Time and payment of the appropriate fees. The amendments made herein and the following remarks are submitted as a full and complete response thereto.

Claims 1-14 are pending.

By this Amendment, claims 12 and 13 are amended. Support for this amendment can be found in the specification and claims as originally filed. For example, claims 12 and 13 have been amended to properly depend from claim 11. Applicants submit that no new matter has been added and respectfully request reconsideration and withdrawal of the pending rejections.

### Rejections under 35 U.S.C. § 102(a)

#### 1. *Wester*

Claims 1-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Wester et al.* (WO 02/082929, hereinafter “*Wester*”). Applicants traverse the rejection.

Claim 1 of the present application is directed to “[b]reakfast cereals with decreased soaking after liquid is added, characterised in that the cereals comprise from 2.2 to 25 weight-% plant sterol esters and at least 50 weight % of puffed and/or extruded cereals.” Claims 2-10 depend from independent claim 1.

Claim 11 of the present application is directed to a “method for decreasing soaking of breakfast cereals after liquid is added characterised in that from 2.2 to 25 weight-% plant sterol esters is added to the breakfast cereals, and wherein the cereal portion comprises at least 50 weight-% of puffed and/or extruded cereals.” Claims 12-14 depend from independent claim 11.

Applicants submit that *Wester* does not teach or suggest the presently claimed invention, in particular “[b]reakfast cereals... comprising from 2.2 to 25 weight-% plant sterol esters and at least 50 weight % of puffed and/or extruded cereals” (claim 1), or a “method for decreasing soaking of breakfast cereals after liquid is added characterised in that from 2.2 to 25 weight-% plant sterol esters is added to the breakfast cereals, and wherein the cereal portion comprises at least 50 weight-% of puffed and/or extruded cereals” (claim 11). Applicants submit that based on the teachings of *Wester* and without the benefit of hindsight, one of

ordinary skill in the art would not understand that breakfast cereals comprising at least 50 weight % of puffed and/or extruded cereals could have decreased soaking characteristics with the addition of “from 2.2 to 25 weight-% of plant sterol esters.” Applicants submit that this unexpected result is not taught or suggested by Wester.

Applicants note that the cited Example in Wester (Example 12) discloses a fruit muesli, which does not comprise “at least 50 weight % of puffed and/or extruded cereals.” Applicants note that, unlike mueslis, puffed and/or extruded cereals have been found to be very prone to soaking. Applicants submit that breakfast cereals comprising at least 50 weight % of puffed and/or extruded cereals exhibit decreased soaking when comprising from 2.2 to 25 weight-% of plant sterol esters (see Example 1 of the present specification).

Applicants respectfully disagree with the Examiner's assertion that, contrary to our arguments that Example 12 does not comprise at least 50 weight % of puffed and/or extruded cereal, the fruit muesli does in fact contain rice crispy cereal pieces, which are known to be puffed. Applicants note that in Example 12, the fruit muesli composition, which is 60 grams, contains 3.0 grams of rice crispy materials. Therefore, even assuming *arguendo* that rice crispy materials are a puffed and/or extruded cereal, the fruit muesli composition contains only 5% of puffed and/or extruded cereal, not “at least 50 weight %,” as presently claimed. Applicants submit that Wester does not teach or suggest the presently claimed invention, or the unexpected benefit of decreased soaking characteristics found with a composition comprising “at least 50% of puffed and/or extruded cereals” and “2.2 to 25 weight-% plant sterol esters” (claims 1 and 11).

Applicants also disagree with the Examiner's assertion that “[i]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the amount of plant sterol esters disclosed by Wester into cereal that is 100% puffed and/or extruded.” Applicants note that rice crisps generally do not contain many fibres and therefore would not be a product such as the one described in Wester.

For at least the above reasons, Applicants submit that Wester does not make obvious the presently claimed invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-14 under 35 U.S.C. § 103(a).

2. *Wester and Plank*

Claims 1-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wester, in view of Plank et al. (U.S. Publication No. 2003/0235643 A1, hereinafter "Plank"). Applicants traverse the rejection.

Claims 1-14 have been discussed above. Wester and its deficiencies have also been discussed above.

Applicants submit that Plank fails to fulfill the deficiencies of Wester. Plank discloses complexes of sterols (sterol/stanol and their fatty acid esters) and polysaccharides. Plank discloses that the complex is first made and then added into a dough form, from which flakes are made (see paragraphs [0039] and [0045]). Applicants submit that, like Wester, Plank fails to teach or suggest the unexpected results of the presently claimed invention. Applicants submit that based on the teachings of Wester and Plank, one of ordinary skill in the art would not understand that the addition of plant sterol esters in an amount of from 2.2 to 25 weight-%, as presently claimed, could result in decreased soaking.

For at least the above reasons, Applicants submit that the presently claimed invention is not obvious in light of Wester and Plank. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-14 under 35 U.S.C. § 103(a) in view of Wester and Plank.

### III. CONCLUSION

Applicants respectfully submit that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event this response is not timely filed, the Applicants hereby petition for an appropriate extension of time. The fee for this extension, along with any other additional fees which may be required with respect to this response, may be charged to Deposit Account No. 01-2300, referencing Attorney Docket No. 019075-00069.

Respectfully submitted,



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